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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,152	06/08/2006	Richard Skiera	74603-336263	8844
25764 7590 04/03/2009 FAEGRE & BENSON LLP PATENT DOCKETING - INTELLECTUAL PROPERTY 2200 WELLS FARGO CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-3901				
EXAMINER				
BHATIA, AARTI				
ART UNIT		PAPER NUMBER		
3763				
NOTIFICATION DATE		DELIVERY MODE		
04/03/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

e-OfficeActionHNI@faegre.com  
dweiss@faegre.com

### Office Action Summary

**Application No.**

10/582,152

**Applicant(s)**

SKIERA ET AL.

**Examiner**

Aarti Bhatia

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the second Office Action based on the 10/582,152 application filed on 6/08/2006. Claims 47-68 as amended on 12/19/2008, are currently pending and have been considered below.

#### ***Response to Amendment***

##### ***Claim Objections***

1. Claim 57 is objected to because of the following informalities: "body at right a angle" should be replaced with --body at a right angle--. Appropriate correction is required.

##### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 47, 51, 52, 54, 55, 56, 57, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by WO/2001/097718 to Blunn et al. (US 2003/0171825 is used for reference below).

Blunn discloses an implant comprising: a load-bearing implant section (figure 4) including an anchoring portion (1) adapted for anchoring into tissue, a skin penetration section (portion of 1), a planar part (4) surrounding the skin penetration section and including a surface forming a support for a skin layer and a plurality of openings (6) or groove-like depressions or roughened section and a tissue adhering substance

(paragraph 0022); and an extracorporeal connector section (5) adapted to be connected to a prosthesis.

***Claim Rejections - 35 USC § 103***

4. Claims 48-50, 53, 58, 60-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blunn et al.

Blunn discloses the implant of claim 47, but is silent to specifics concerning the materials and assembly of the implant.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implant of Blunn with various modifications including changing the materials, the number of planar sections, and the way of connecting the sections of the implant as these are all design choices that are within the level of ordinary skill in the art.

5. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4,959,054 to Heimke et al. or USPN 4,092,983 to Slivenko in view of USPN 5,425,761 to Lundgren

Heimke and Slivenko both teach an implant with an anchoring portion, a skin penetration section, and a planar part forming a support for a skin layer, but fail to teach that the implant is designed for attachment of a load, in particular of a prosthesis.

Lundgren teaches a subcutaneous implant with a through-passage which is adapted for both bone and tissue support (figure 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to adapt the implant of Heimke or Slivenko for attachment of a load, such as taught by Lundgren to combine bearing stability with good stability (column 1, lines 5-39).

### ***Response to Arguments***

6. Applicant's arguments filed 12/19/2008 have been fully considered but they are not persuasive. The applicant argues that Lundgren fails to teach that the implant is adapted for attachment for a prosthesis. The examiner disagrees. Present claim 47, is so broad that virtually any transcutaneous implant with a planar section can meet the limitations of the claim. The limitation that the external portion is adapted to be connected to a prosthesis, merely indicates that any prosthetic can be connected, including something with a very low weight.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aarti Bhatia whose telephone number is (571) 270-5033. The examiner can normally be reached on Monday-Thursday 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call (800) 786-9199 (IN USA OR CANADA) or (571) 272-1000.

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Art Unit: 3763

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/Aarti Bhatia/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763